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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1902.

No. 282.

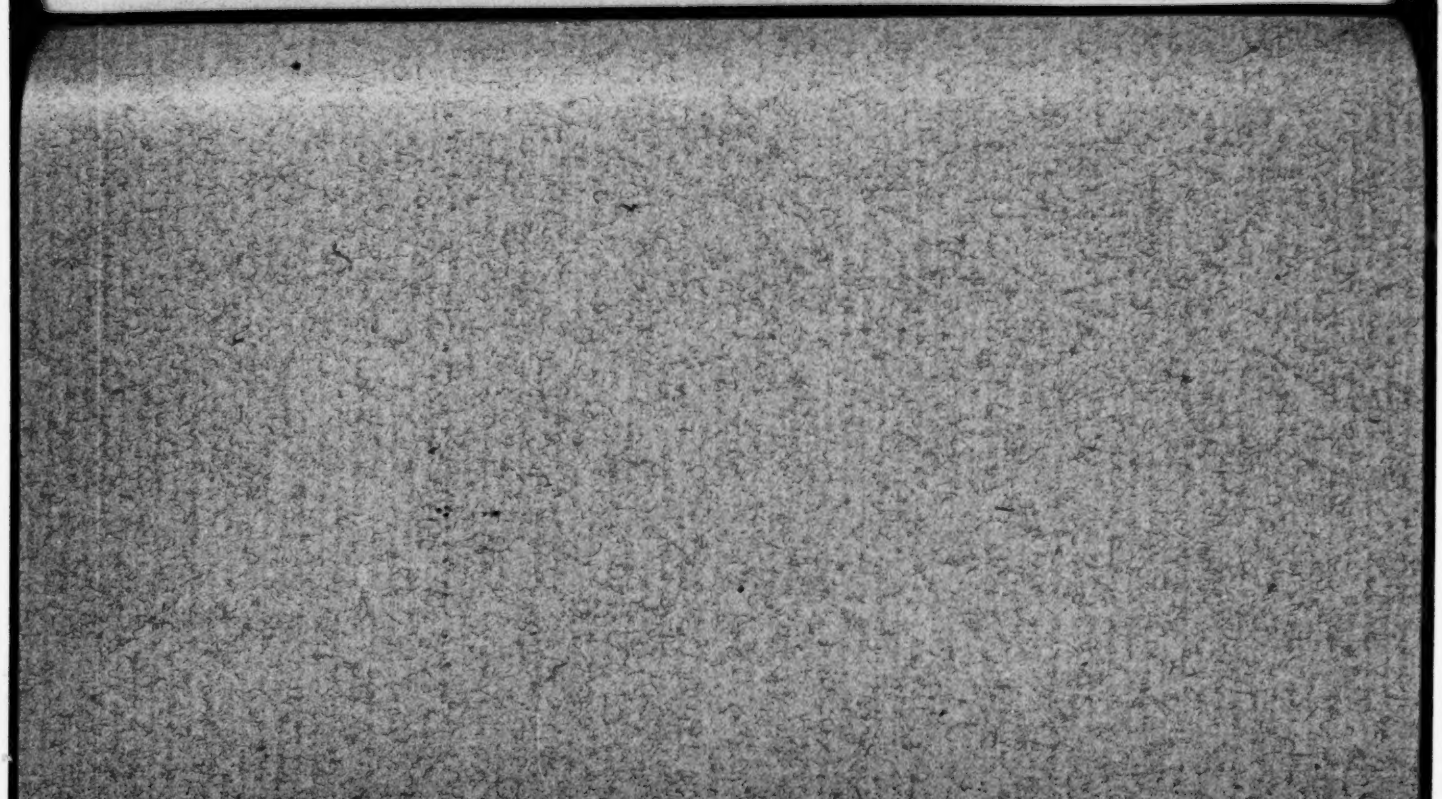
SOUTHERN RAILWAY CO., PLAINTIFF IN ERROR,

vs.

JOHN H. ALLISON, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF NORTH CAROLINA.

BRIEF FOR PLAINTIFF IN ERROR, SOUTHERN RAILWAY CO.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1902.

No. 232.

SOUTHERN RAILWAY CO., PLAINTIFF IN ERROR,

vs.

JOHN H. ALLISON, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF NORTH CAROLINA.

Brief for Plaintiff in Error, Southern Railway Co.

This case is brought to this Court upon a writ of error from the Supreme Court of North Carolina, and presents practically but two questions: Has a railroad company, incorporated in another State and operating, by lease and otherwise, lines of railroad in North Carolina, which has complied with the terms of an "Act to provide a manner in which foreign corporations may become domestic corporations" (Public Acts N. C., 1899, chapter 62), a right under the laws of the United States to remove a case to the United States Circuit Court?

Can the allegations in petition for such removal, filed in the United States Circuit Court, be controverted in the State courts?

FACTS.

The facts are few and without complication.

The plaintiff in error, Southern Railway Company, is a corporation created under the laws of the State of Virginia, and for years has carried on the usual business of a railroad company and common carrier, both as regards interstate and domestic traffic, upon leased and controlled lines of railroad in the State of North Carolina.

On February 10, 1899, the General Assembly of North Carolina passed the following statute (Public Acts 1899, chapter 62):

The General Assembly of North Carolina do enact:

SECTION 1. That every telegraph, telephone, express, insurance, steam-boat and railroad company incorporated, created and organized under and by virtue of the laws of any State or government other than that of North Carolina, desiring to own property or to carry on business or to exercise any corporate franchise whatsoever in this State, shall become a domestic corporation of the State of North Carolina by filing in the office of the Secretary of State a copy of its charter duly authenticated in the manner directed by law for the authentication of statutes of the State or country under the laws of which such company or corporation is chartered and organized, and a copy of its by-laws duly authenticated by the oath of its secretary. Such corporation shall pay therefor to the Secretary of State, to be turned over by him into the State treasury, such fees as are or may be required by law.

SEC. 2. That if any such charter or by-laws, or any part thereof, filed in the office of the Secretary of State shall be in contravention or violation of the laws of this State, such charter or by-laws or such part thereof as are in conflict with the laws of this State shall be null and void in this State.

SEC. 3. That when any such corporation shall have complied with the provisions of this act above set out, it shall thereupon immediately become a corporation of this State and shall enjoy the rights and privileges and be subject to the liability of corporations of this State the same as if such corporation had been originally created by the laws of this State. It may sue and be sued in all courts of this State and shall be subject to the jurisdiction of the courts of this State as fully as if such corporation were originally created under the laws of the State of North Carolina.

SEC. 4. That on and after the first day of June, eighteen hundred and ninety-nine, it shall be unlawful for any such corporation to do business, or to attempt to do business in this State without having fully complied with the requirements of this act.

SEC. 5. Any such corporation violating any provision of this act shall forfeit to the State of North Carolina a penalty of two hundred dollars for each and every day after the first day of

June, eighteen hundred and ninety-nine, on which such corporation shall have continued to operate or do business without having complied with the requirements of this act. Such penalty shall be recovered by the Treasurer of the State for the benefit of the State of North Carolina, and it shall be his duty to sue for such forfeitures in the Superior Court of Wake county as the same accrue.

SEC. 6. No telegraph, telephone, express, insurance, steamboat or railroad company, which is a foreign corporation of another State doing business in North Carolina, shall be allowed to sue in the courts of North Carolina on or after June first, eighteen hundred and ninety-nine, until such foreign corporation has become a domestic corporation, either by a special act of the Legislature, or under the provisions of this act.

SEC. 7. No such foreign corporation, mentioned in the preceding section of this act, shall be allowed to enter into a contract in the State of North Carolina, on or after the first day of June, eighteen hundred and ninety-nine, nor shall any such contract heretofore or hereafter made, or attempted to be made and entered into by such corporation in the State of North Carolina be enforcible by such corporation unless such corporation shall, on or before the first day of June, eighteen hundred and ninety-nine, become a domestic corporation under and by virtue of the laws of North Carolina.

SEC. 8. Any such corporation violating the provisions of this act by doing any business in this State without first becoming a domestic corporation in the manner prescribed by law, shall, in addition to the penalty prescribed in section 5 of this act, forfeit a penalty of five hundred dollars for each day any such business shall be done by it in the State of North Carolina on or after the first day of June, eighteen hundred and ninety-nine. The amount so forfeited under the provisions of this section shall be recovered by the Treasurer of North Cadolina and it shall be the duty of said State Treasurer to institute suit for same in the Superior Court of Wake county: *Provided*, the business contemplated in this section of this act does not embrace such business as is strictly the business of interstate commerce.

SEC. 9. That all laws and clauses of laws in conflict with the provisions of this act are hereby repealed.

SEC. 10. That this act shall be in force from and after its ratification.

Ratified the 10th day of February, A. D. 1899.

It was admitted in the State court (although it did not appear in the petition for removal or in any pleading) that the South-

ern Railway had complied with the terms of the above quoted "domestication act" (as the act of 1899 will be termed in this brief).

J. H. Allison, defendant in error, was injured by the alleged negligence of the plaintiff in error in the year 1900, and brought suit in the Superior Court of McDowell county, North Carolina. The Southern Railway on June 25, 1901, filed in the U. S. Circuit Court for the Western District of North Carolina a petition for the removal of the cause to the U. S. Circuit Court for the Western District of North Carolina, upon the ground of prejudice and local influence. The petition is in an approved form, reciting that the Southern Railway is "a corporation, duly created and organized under the laws of the State of Virginia, and is not a resident of this State (North Carolina); that it was, at the commencement of this suit, and still is, a citizen of Virginia." It also alleged that Allison "was, at the beginning of the suit, and still is, a citizen and resident of North Carolina; that the amount in controversy exceeded $2,000, and that from prejudice and local influence it could not obtain justice in the Superior Court of McDowell county, or in any other court to which, under the laws of North Carolina it had a right to remove the case, on the ground of such prejudice and local influence."

The petition was accompanied by the usual bond, and also by an affidavit setting forth categorically that the prejudice existed, and that there had been many trials of actions against the Southern Railway in McDowell county, and that without regard to the weight of evidence the verdicts had been invariably against the railroad company.

The Judge of the U. S. Court found as a fact that the petitioner could not obtain justice in the Superior Court of McDowell county or in any other court to which the defendant had the right, on account of such prejudice or local influence, to remove the suit, and ordered the removal.

When the case was called for trial at August Term, 1901, of the Superior Court of McDowell county, the defendant exhib-

ited to the Court a transcript of the proceeding, petition, affidavit, bond and order, duly certified, but the Court refused to dismiss the case from the docket or to proceed no further therein, and signed an order which appears on page 14 of the record, adjudging that the Southern Railway was a corporation of North Carolina, and was not entitled to remove the cause to the Federal Court, and the State court refused to surrender jurisdiction. To this the defendant (now the plaintiff in error) excepted.

At October Term, 1901, of McDowell Superior Court, when the case was called for trial the motion was renewed and again refused, and the defendant (plaintiff in error) again excepted. The case proceeded to trial, there was a verdict and judgment against defendant, and an appeal to the Supreme Court of North Carolina.

Upon the appeal the judgment of the court below was affirmed, in an opinion filed by Montgomery, Justice, to be found in the record on pages 16-20, and reported as Allison *vs.* R. R., 129 N. C., 336.

The defendant in that appeal (the plaintiff in error herein) sued out a writ of error from the Supreme Court of North Carolina, which was allowed by Chief Justice Furches.

QUESTIONS PRESENTED.

The questions presented are:

1. Has the State court the right to pass upon the question, whether a corporation which has been adjudged by the United States Court to be a foreign corporation, in a proceeding to remove to the United States Court on the ground of prejudice and local influence, is a domestic corporation, or is the finding by the United States Court conclusive upon the State court?

2. Has a corporation, which is organized under the laws of some other State than North Carolina, and which has complied with the terms of the domestication act of North Carolina, the right to remove a case to the U. S. Circuit Court?

PRELIMINARY ARGUMENT.

The plaintiff in error will not enter upon any extended argument upon those matters of practice which must be regarded as settled. The petition for the removal of a cause from a State court to the U. S. Circuit Court on account of prejudice or local influence can be made only in the Federal Courts. The statute requires that it *"be made to appear to the said Circuit Court* that from prejudice or local influence the defendant will not be able to obtain justice in any State court, etc." Pennsylvania Co. *vs.* Bender, 148 U. S., 255; Williams *vs.* Telephone Co., 116 N. C., 560; Blackwell *vs.* Railroad, 107 N. C., 217; Bender *vs.* Meikle, 77 Fed., 485. Under the provisions of the removal act of 1887, amended as in 1888, where all the plaintiffs are citiens of the State where the suit is brought, any defendant who is a citizen and resident of another State may remove the cause, upon a proper showing as to the existence of prejudice and local influence. Bonner *vs.* Meikle, 77 Fed., 489; Jackson *vs.* Pearson, 60 Fed., 113, and many cases cited.

"The proper way is for him to obtain an order for the removal from the Federal Court, file that order in the State court, and take from it a transcript, and file it in the Federal Court." Penn. Co. *vs.* Bender, 148 U. S., 255. "The application must be supported by such proof as satisfies the Federal Court to which it is presented of the true facts of its allegations. The evidence necessary to support the Federal jurisdiction does not have to prove morally that the petitioning defendant cannot obtain a just decision in the State court. It is only necessary to present to the Circuit Court evidence suitable to the case, and sufficient to prove legally that prejudice and local influence do exist, which will naturally operate to the disadvantage of the defendant in the trial of his case before a State tribunal." Tacoma *vs.* Wright, 84 Fed., 836.

The case just cited was an equity case, and the difficulty of proving the existence of local prejudice in a case to be tried by a chancellor, was naturally greater than in proving such preju-

dice to exist among the people from whom jurors are usually chosen; but the removal was sustained.

As was said by Mr. Justice Bradley *in re* Pennsylvania Co., 137 U. S., 451, "The amount and manner of proof in each case must be left to the discretion of the Court itself."

In the present case it is shown that the petitioning defendant had seen case after case tried in the county of McDowell before juries, and notwithstanding the preponderance of evidence was sometimes in favor of the defendant, in no single instance had any verdict ever been rendered in favor of the railroad company.

The plaintiff did not seek to take advantage of the provision of the statute authorizing him to present affidavits to the court of the non-existence of such prejudice upon a motion to remand, but relied solely upon the contention that the Southern Railway was a citizen of North Carolina. So far as the record shows, the utterly uncontradicted proof before the court made it clear that the defendant could not obtain justice in the courts of McDowell.

But it may possibly be contended that under the North Carolina statute the defendant would have a right to remove the cause for trial to the court of some adjoining county. The laws of North Carolina do not give such right to the defendant. The Code, Section 196 (eliminating the references to criminal actions) provides: "In all civil actions in the Superior Courts, in which it shall be suggested on oath or by affirmation on behalf of the plaintiff or defendant, that there are probable grounds to believe that a fair and impartial trial cannot be obtained in the court in which the action should be pending, the Judge shall be authorized to order a copy of the record of said action to be removed to some adjacent county for trial, if he shall be of the opinion that a fair trial cannot be had in said county, after hearing all the testimony which may be offered on either side by affidavits."

"Sec. 97. No action, whether civil or criminal, shall be removed, unless the affidavit shall set forth particularly and in

detail the ground of the application. And it shall be competent for the other side to controvert the allegations of fact in said application, and to offer counter affidavits to that end. And the Judge shall order the removal of any such action if he shall be satisfied, after thorough examination of the evidence as aforesaid, that the ends of justice demand it."

This statute does not give either party any *right* to remove, but only authorizes the court in its discretion to make such order. It is purely a matter of judicial discretion which cannot be reviewed by the Appellate Court. State *vs.* Johnson, 104 N. C., 780. Such statutes merely authorizing a change of venue, and not giving to a party "the right to remove" a cause, are not to be considered as affecting in any way a defendant's *right* to remove a cause into the U. S. Circuit Court. Herndon *vs.* Railroad, 73 Fed., 308; Tacoma *vs.* Wright, 84 Fed., 836, and other cases cited.

Can the State court review the finding of the United States Court that the petitioner is not a citizen of North Carolina?

The plaintiff in error may well contend that, when the petition for removal and the order were regular in form, the State court could not review any question of fact, either as to the citizenship of the petitioner or the existence of prejudice, which did not appear upon the face of the record. The defendant was not obliged either to admit or deny in the State courts the facts concerning its domestication, because that fact could have been shown in the Federal Court upon a motion to remand.

The Federal Court alone is the proper tribunal to pass upon the questions of fact and law involved in a removal, and the ultimate tribunal which must pass upon the questions involved is the Supreme Court of the United States, whether the cause shall be taken through the Federal Courts or by writ of error from the State courts.

Whether the Southern Railway is a citizen of North Carolina or not, is a question of *fact,* unless all the facts in regard to its citizenship appear upon the record. The plaintiff in error did not seek to conceal that it had complied with the domestication act of North Carolina, nor was that fact concealed in the

application to the United States Court. When an order for removal is signed and a certified copy of petition, bond, affidavit and order certified to the State court, it is respectfully submitted that the decision upon the fact of citizenship cannot be reviewed by the State court, unless there is something in the record to justify such reviewal. This is true whether the fact depends upon a question of law or not. Of course if the record shows upon its face that the order of removal was without legal justification, because the petitioner was a citizen of North Carolina, the State court is under no obligation to relinquish its jurisdiction. In the present case there is no doubt as to the *fact* of the "domestication" of the Southern Railway in compliance with the terms of the act, because it was admitted (though not in the record) in the State court. But as this fact did not appear in the record of the petition for removal, all questions arising in regard to it should be passed upon in the court where the petition for removal was filed, and cannot be reviewed collaterally by the State court.

In Powers *vs.* C. & O. Ry., 65 Fed., 129, it is held that it is not for the State court to pass upon the facts involved in the averments of a petition for removal. It can only deny an application to remove when, as a matter of law, in the face of the petition and the facts disclosed by the record, the right does not exist.

To the same effect are R. R. *vs.* Dougherty, 138 U. S., 298, and Crehore *vs.* R. R., 131 U. S., 240; R. R. *vs.* Dunn, 122 U. S., 513.

NO OBJECTION TO A REVIEW UPON THE MERITS.

The plaintiff in error, however, will not object to a decision upon the merits. The Southern Railway Company desires to obey, both in letter and spirit, the laws of the State of North Carolina properly construed in accordance with the Constitution and laws of the United States.

If, under the act of 1899, the Southern Railway Company, a Virginia corporation, but domesticated under the laws of

North Carolina, has lost its rights under the statutes of the United States, it desires to be fully informed at the earliest day possible.

The order of removal was valid.

Assuming that the question is properly presented by the record, and that the State court had a right to pass upon the question, it is submited that a railroad corporation, chartered in Virginia, which operates by lease and otherwise railroads in North Carolina, and which has complied with the terms of the domestication act, has the right to remove a case to the United States Courts.

If the plaintiff in error has correctly conceived the point in issue, the question is neither novel nor complicated. It has been expressly decided by the Supreme Court of the United States, by the Supreme Court of South Carolina and by several Federal Courts, and so far as the researches of the plaintiff in error have gone, the only appellate tribunal in the United States which has asserted and continued to maintain a contrary opinion, is the Supreme Court of North Carolina.

The facts which appear in the record and the statute which has been construed by the North Carolina Supreme Court have already been set forth. There is no suggestion that the domestication act constituted a new corporation of citizens of North Carolina, or conferred upon such corporation the right to build or operate any railroad in the State, except in so far as it authorized the lease, operation or construction of railroads already incorporated under specific charters obtained in North Carolina. It is not admitted that a statute of this kind would have changed the result, but it is merely mentioned to demonstrate that in this respect the case for the plaintiff in error is decidedly stronger than the Kentucky case cited below.

The provisions of the North Carolina statute in brief are, that a railroad company, incorporated under the laws of another State, seeking to operate any railroad or to exercise any franchise in North Carolina, shall become a domesticated corporation by filing a copy of its charter, etc., in the office of the

Secreatry of State, and that after compliance with this requirement it shall immediately become a "corporation of this State." The remainder of the statute prescribes regulations for carrying out its provisions, and penalties for its violation.

In order to apply the decisions it will perhaps be advisable to set forth a synopsis of this statute of other States upon this subject which have been passed upon in the cases to be cited.

STATUTES OF OTHER STATES.

By comparison of the various statutes construed by the courts in the several cases, the analogy between the statutes of South Carolina, Kentucky, Arkansas, Nebraska and Tennessee, and the North Carolina statute, will clearly appear. The South Carolina statute is construed in Mathis *vs.* R. R., 53 S. C., 257, and in Wilson *vs.* R. R., 36 S. E., 701, Acts 1896, 22 S. C. Stats. at Large, chapter 114. Section 1791 provides that every railroad corporation, created or organized by virtue of any government other than that of this State, desiring to carry on business or to exercise any corporate franchise in this State of any kind whatever, shall file in the office of the Secretary of State a copy of its charter, paying, etc., to be registered in each county through which the railroad passes. Section 1792 provides that if any part of such charter is in contravention of the laws of South Carolina it shall be void. Section 1793: "When a foreign corporation complies with the provisions and requirements of this chapter, it shall *ipso facto* become a domestic corporation and shall enjoy the rights and be subject to the liabilities of such domestic corporation; it may sue and be sued in the courts of the State and shall be subject to the jurisdiction of this State as fully as if it were originally created under the laws of South Carolina.

The facts in regard to the statute of Kentucky, construed in the case of Louisville, N. A. & C. R. R. *vs.* Louisville Trust Co., 174 U. S., 552, are as follows: The petitioner called "The New Albany Company" was incorporated under the laws of the State of Indiana. In 1880 the Kentucky Legislature passed

an "Act to incorporate the New Albany and Chicago Railway Company," section one of which provides: "The Louisville, New Albany and Chicago Railway Company, a corporation organized under the laws of the State of Indiana, is hereby constituted a corporation, with power to sue and be sued, contract and be contracted with, to have and use a common seal, with the power incident to corporations, and authority to operate a railroad." The second section gave power to buy or lease land for depot purposes and tracks and connections therewith, in the city of Louisville, and also the right to condemn for the same.

It should be noted that this statute actually gives *proprio vigore* the right of eminent domain in Kentucky.

The Arkansas statute of 1881, construed in Railway *vs.* James, 161 U. S., 545, provided that a railroad company incorporated by another State, owning a line running to the boundary of Arkansas, might purchase the rights of any Arkansas railroad connecting with it and construct, operate, etc., such railroad.

A subsequent statute, passed in 1889, provided that every railroad corporation which had purchased a railroad in that State should, within sixty days from the passage of the act, file a copy of its articles of incorporation or its charter with the Secretary of State and should "thereupon become a corporation of this State, anything in its articles of incorporation or charter to the contrary notwithstanding." And the railway company forthwith filed a copy of its articles of incorporation, granted under the laws of Missouri.

The Constitution of Nebraska, construed in Walters *vs.* R. R., 104 Fed. R., 377, provides that "no railroad organized under the laws of any other State or of the United States, and doing business in this State, shall be entitled to exercise the right of eminent domain, etc., until it shall have become a body corporate in accordance with the laws of Nebraska."

The statute of Tennessee, Acts 1877, chapter 31, at first applicable to mining companies only, was made applicable to all corporations by Acts 1891, chapter 122. It provides that "when

a corporation complies with the provisions of this act it shall be to all intents and purposes a domestic corporation, and may sue and be sued in the courts of this State, just as though it were created under the laws of this State."

The Supreme Court of North Carolina based its decision in the series of cases construing the North Carolina domestication act upon what it regarded as the exact analogy between the Alabama statute, construed in the case of Memphis, etc., R. R. *vs.* Alabama, 107 U. S., 581, and the North Carolina statute. It is therefore deemed proper to cite also the Alabama statute construed in that case. The differences are underlying and apparent at a glance.

A railroad was proposed to establish connections between Memphis, Tennessee, and Charleston, S. C., and was incorporated in Tennessee. The best line ran through Northern Alabama, and in 1850 the Legislature of Alabama passed "An act to incorporate the Memphis & Charleston Railroad Company."

The preamble recited the passage of an act and an amendatory act by the State of Tennessee, incorporating the Memphis & Charleston Railroad Co., and that it is believed that the most eligible route is through a portion of Alabama.

The act provided that the company should have a right of way, etc.; for the construction of branch lines, etc. The third section provided for *opening books of subscription* in Alabama, to permit *citizens of Alabama* to subscribe as much as $1,500,000 to the capital stock; the fourth section provided for meetings of stockholders in *Alabama* and the election of directors; the fifth, that money subscribed in Alabama shall be first applied to the construction of the railroad in that State. All subsequent legislation speaks of the company as incorporated by the Legislature of Alabama. That such a corporation is an Alabama corporation and a citizen of Alabama is clear; but it would seem to be equally clear that there is no analogy between such a statute and the one now before the Court.

The plaintiff in error regards the question of citizenship of domestic corporations as *res judicata* in this Court.

In St. L. & S. F. Ry. Co. *vs.* James, 161 U. S., 545, the St. L. & S. F. Ry. Co., a Missouri corporation, under the provisions of the Arkansas statute cited above, page 12, filed in the office of the Secretary of State of Arkansas, a certified copy of its articles of incorporation under the laws of Missouri. A citizen of Missouri sued the corporation in the U. S. Circuit Court for the Western District of Arkansas. Upon an objection to the jurisdiction, the following question was certified to the Supreme Court of the United States.

2. In view of the provisions of Arkansas statute of 1889 (the substance of which will be found on page 12), did the St. L. & S. F. R. R., by filing a certified copy of its articles of incorporation under the laws of Missouri, with the Secretary of State of Arkansas, and continuing to operate its railroad through that State, become a citizen of Arkansas, so as to give the U. S. Circuit Court for the Western District of Arkansas jurisdiction of an action in which the defendant in error (original plaintiff) was and is a citizen of Missouri?

Despite any ingenious quibble, this is almost the exact question presented in the case now before the Court.

In view of the provisions of the North Carolina "domestication act," did the Southern Railway, by filing a certified copy of its charter under the laws of Virginia, with the Secretary of State of North Carolina, and by continuing to operate its railroad, become a citizen of North Carolina so as to deprive the U. S. Circuit Court of the Western District of North Carolina of jurisdiction of an action in which the defendant in error (originally plaintiff) is a citizen of North Carolina?

The statutes of Arkansas and of North Carolina in their main features are intended to accomplish the same result—that is to make a domestic corporation out of a foreign one, by filing its charter in the office of the Secretary of State.

Justice Shiras, speaking for the Court, after citing at length the statutes of Arkansas, reviews the following cases: Bank *vs.* Deveaux, 5 Cranch, 61; R. R. *vs.* Letson, 2 How., 497; Marshall *vs.* R. R. Co., 16 How., 314; Drawbridge Co. *vs.* Shepherd, 20 How., 233; R. R. *vs.* Wheeler, 1 Black., 286;

M. & C. R. R. Co. *vs.* State, 107 U. S., 581; R. R. *vs.* Whitton, 13 Wall., 270; Penn. R. R. *vs.* St. L., etc., R. R., 118 U. S., 290.

Admitting the difficulty of reconciling all the expressions used in the cases, the following propositions were stated as fairly deducible from them:

"There is an indisputable legal presumption that a State corporation, when sued or suing in a Circuit Court of the United States, is composed of citizens of the State which created it, and hence such a corporation is itself deemed to come within that provision of the Constitution of the United States which confers jurisdiction upon the Federal Courts in 'controversies between citizens of different States.'

"It is competent for a railroad corporation organized under the laws of one State, when authorized so to do by the consent of the State which created it, to accept authority from another State to extend its railroad into such State, and to receive a grant of powers to own and control, by lease or purchase, railroads therein, and to subject itself to such rules and regulations as may be prescribed by the second State. Such legislation on the part of two or more States is not, in the absence of inhibitory legislation by Congress, regarded as within the constitutional prohibition of agreements or compacts between States.

"Such corporations may be treated by each of the States whose legislative grants they accept as domestic corporations. The presumption that a corporation is composed of citizens of the State which created it accompanies such corporation when it does business in another State, and it may sue or be sued in the Federal Courts in such other State as a citizen of the State of its original creation.

"We are now asked to extend the doctrine of indisputable citizenship so that, if a corporation of one State, indisputably taken, for the purpose of Federal jurisdiction, to be composed of citizens of such State, is authorized by the law of another State to do business therein, and to be endowed for local purposes with all the powers and privileges of a domestic corpora-

tion, such adopted corporation shall be deemed to be composed of citizens of the second State, in such a sense as to confer jurisdiction on the Federal Courts at the suit of a citizen of the State of its original creation.

"We are unwilling to sanction such an extension of a doctrine which, as heretofore established, went to the very verge of judicial power. That doctrine began, as we have seen, in the assumption that State corporations were composed of citizens of the State which created them; but such assumption was one of fact, and was the subject of allegation and traverse, and thus the jurisdiction of the Federal Courts might be defeated. Then after a long contest in this court, it was settled that the presumption of citizenship is one of law, not to be defeated by allegation or evidence to the contrary. There we are content to leave it.

"It is true that by the subsequent act of 1889, by the proviso to the second section, it was provided that every railroad corporation of any other State which had theretofore leased or purchased any railroad in Arkansas, should, within sixty days from the passage of this act, file a certified copy of its articles of incorporation or charter with the Secretary of State, and shall thereupon become a corporation of Arkansas, anything in its articles, incorporation or charter to the contrary notwithstanding; and it appears that the defendant company did accordingly file a copy of its articles of incorporation with the Secretary of the State.

"But whatever may be the effect of such legislation, in the way of subjecting foreign railroad companies to control and regulation by the local laws of Arkansas, we cannot concede that it availed to create an Arkansas corporation out of a foreign corporation in such a sense as to make it a citizen of Arkansas within the meaning of the Federal Constitution, so as to subject it as such to a suit by a citizen of the State of its origin.

"In order to bring such an artificial body as a corporation within the spirit and letter of that constitution, as constituted by the decisions of this Court, it would be necessary to create

it out of natural persons, whose citizenship of the State creating it could be imputed to the corporation itself. But it is not pretended in the present case that natural persons, resident in and citizens of Arkansas, were, by the legislation in question, created a corporation, and that therefore the citizenship of the individual corporators is imputable to the corporation."

In the case of Louisville, N. A. & C. R. R. vs. Louisville Trust Co., 174 U. S., 552, the question was again before the Court. The Kentucky statute, construed in the Louisville case has been cited above. By an express statute of Kentucky the Indiana corporation, L., N. A. & C. R. R. Co., was "constituted a corporation of Kentucky, with power to sue and be sued, etc., and authority to operate a railroad." The right of eminent domain was conferred.

The Court says it is not material to decide whether the corporation became a Kentucky corporation, in deciding the question of jurisdiction:

"But a decision of the question whether the plaintiff was or was not a corporation of Kentucky does not appear to this Court to be required for the disposition of this case, either as to the jurisdiction or as to the merits. As to the jurisdiction, it being clear that the plaintiff was first created a corporation of the State of Indiana, even if it was afterwards created a corporation of the State of Kentucky also, it was, and remained, for the purposes of the jurisdiction o fthe Courts of the United States, a citizen of Indiana, the State by which it was originally created. It could neither have brought suit as a corporation of both States against a corporation or other citizen of either State, nor could it have sued or been sued as a corporation of Kentucky in any court of the United States."

The Court reviews at length the opinion in the James case already cited, and strongly re-affirms it, basing its conclusions upon quotations from the opinion, most of which have been given above.

The Supreme Court of South Carolina, in the case of Wilson vs. Southern Railway, S. C. 36, S. E. 701, reviews its former

decision in Mathis *vs.* Southern Railway Co., 53 S. C., 257, and reverses it, conforming its decision to that of the Supreme Court of the United States. The South Carolina statute above cited is practically the same as the North Carolina statute in regard to domestication.

Judge Jones, speaking for a unanimous Court, says frankly:

"In the case of Mathis *vs.* Railway Co., 53 S. C., 257, this Court held that the said Southern Railway Company, having become a domestic corporation by compliance with said act, was not entitled to the benefit of those provisions of the act of Congress of the United States governing the removal of causes from the State courts to the United States Circuit Court because of diverse citizenship. We have been induced to review the case of Mathis *vs.* Railway Co., *supra*, and, after careful consideration, have reached the conclusion that it is not in harmony with the recent decisions of the United States Supreme Court, by which this Court must be controlled on questions of this kind. The Mathis case was supposed to be in harmony with the decision in Memphis & C. R. Co. *vs.* Alabama, 107 U. S. 581, wherein it seemed to hold that the Memphis & Charleston Railroad Company, previously incorporated in Tennessee and afterwards made an Alabama corporation by the statutes of Alabama, could not remove into the Circuit Court of the United States a suit brought against it in Alabama by a citizen of Alabama. But this Court failed to observe the distinction between the creation of a new corporation out of natural persons and the mere adoption of a foreign corporation as a domestic corporation for local purposes. A corporation is indisputably presumed to be composed of citizens of the State creating it, and for purposes of Federal jurisdiction the citizenship of its corporators is imputed to the corporation. In the case of Railway Company *vs.* James, 161 U. S., 545, the Supreme Court of the United States refused 'to extend the doctrine of indisputable citizenship, so that if a corporation of one State, indisputably taken, for the purpose of Federal jurisdiction, to be composed of citizens of such State, is authorized by the law of another State to do business

therein, and to be endowed for local purposes with all the powers and privileges of a domestic corporation, such adopted corporation shall be deemed to be composed of citizens of the second State in such a sense as to confer jurisdiction on the Federal Court at a suit of a citizen of the State of its original creation.' As the right of removal depends upon diverse citizenship, we take it that the United States Court, upon the principle announced above, would not extend the doctrine of indisputable citizenship to a corporation originally created in one State, and afterwards adopted as a domestic corporation in another State, so as to make such adopted corporation a citizen also of the second State."

In Walters *vs.* C., B. & Q. R. R., 104 Fed. Rep., 377, the statute of Nebraska cited above was construed by Judge Munger. He decided that under this statute a foreign railroad company became a corporation of Nebraska so far as to render it subject to State regulation, but that it did not thereby change its citizenship for the purpose of jurisdiction of the Federal Courts. The point was presented upon a motion to remand, the case having been renewed upon petition to the U. S. Circuit Court.

The Court thus lays down the following rule as to the citizenship of corporations:

"The rule deducible from the decisions of the Supreme Court in the two cases referred to is, that a corporation, as such, has no citizenship; that the citizenship of the incorporators determines the jurisdiction of the Federal Court; that the citizenship of the incorporators is conclusively presumed to be that of the State in which the corporation was first created; that while a corporation organized by the laws of one State may become a domestic corporation of another State, the laws of the two States permitting, yet the citizenship of the incorporators remains that of the State in which corporation was first created."

In passing upon the effect of the Tennessee statute, which requires every foreign corporation to file a copy of its charter, etc., and that "when a corporation complies with the provisions of this act it shall then be to all intents and purposes a domestic

corporation," etc., Judge Clark, in Markwood *vs.* Southern Railway, 65 Fed. R., 817, says: "A mere declaration in the title or body of the act is not sufficient to make a foreign corporation also a domestic one, nor can the use of mere general terms do so. The efficient and operative terms of the act must be sufficient in force and effect to accomplish the result. It requires more than a formal, general statement. Taking these acts together, and looking at them as a whole, I think the purpose and effect were to subject these corporations to the jurisdiction and process of the State Courts, as domestic ones, to bring them within the power of taxation, and that there was no purpose beyond this, except the main purpose, which the act, in section 7, declares for itself. If the purpose was to make these companies corporations of this State, I think the legislation falls short of giving effect to such purpose. Any general or formal terms and phrases in the act are limited and restrained by specific terms in the same section, and by the general effect and purpose of the acts taken as a whole, and this rule applies particularly to section 3 of the original and section 4 of the amendatory act. No reason can be assigned for an intention by the General Assembly to do more than this, unless it was to defeat jurisdiction of the United States Courts, and this would be to impute to the acts a purpose which would render them invalid if expressed. Southern Pacific Co. *vs.* Denton, 146 U. S., 202; Barron *vs.* Burnside, 121 U. S., 186."

The plaintiff in error does not think it necessary to support well considered cases in this Court by further citation of authorities. The case of Debnam *vs.* Telephone Co., 126 N. C., 831, upon which all the North Carolina cases upon this subject are based, rests solely upon a construction of the case of M. & C. R. R. *vs.* Alabama, 107 U. S., 581, *supra*, which is absolutely in the face of the James case and the Louisville Trust Co. case commented upon above. The express language of these two cases, relied upon and quoted in the briefs of counsel, is nowhere alluded to in any of these opinions, but brief citations from other parts of the opinions are given instead. It has become

absolutely necessary, therefore, to ask the interpretation of this Court to preserve the paramount authority of the Constitution and laws of the United States.

It is not necessary to quote the contemporary language of the members of the Legislature and the North Carolina press to demonstrate the purpose and intent of this legislation. It is so clear that "he may run that readeth it." The lawyer who asserts and maintains the right of a foreign corporation to remove a case to the Courts of the United States will frequently meet with attack in the press, and occasionally may expect criticism from other sources. It is of an importance far in excess of the amount involved in this litigation, that the true spheres of State and Federal jurisdiction shall be again mapped out and authoritatively declared.

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